

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRADLEY SMITH,

Plaintiff,

v.

ERIC SHINSEKI, Secretary, Department of
Veterans Affairs,

Defendant.

Case No. 2:12-cv-2141-APG-NJK

ORDER

(Dkt. ##6, 12, 17)

Defendant has moved to dismiss the second, third, and fourth causes of action set forth in Plaintiff's Complaint because Plaintiff failed to exhaust his administrative remedies before filing those claims. (Dkt. #12.) In his response to the Motion, Plaintiff agrees to the dismissal of those claims. (Dkt. #14.) Thus, those claims will be dismissed. Moreover, to the extent that Plaintiff's first cause of action is meant to be a negligence claim, that claim would likewise be dismissed for failure to exhaust. However, to the extent that Plaintiff's first cause of action asserts only a claim for retaliation under Title VII of the Civil Rights Act of 1964, he may proceed with that claim as it was properly exhausted before the lawsuit was filed.

In addition, Plaintiff's Motion for Default Judgment (Dkt. #6) is denied.

Finally, given the disposition of the Defendant's Motion to Dismiss, Defendant's Motion to Stay Discovery (Dkt. #17) is denied as moot.

IT IS HEREBY ORDERED that the second, third and fourth causes of action set forth in Plaintiff's Complaint are DISMISSED without prejudice.

1 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Default Judgment (Dkt. #6)
2 is denied.

3 **IT IS FURTHER ORDERED** that Defendant's Motion to Stay Discovery (Dkt. #17)
4 is denied as moot.

5 Dated: July 29, 2013

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8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
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